

IN THE MATTER OF	:	BEFORE THE
	:	HOWARD COUNTY
PLUMTREE, LLC	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 08-050V

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DECISION AND ORDER

On December 1, 2008, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Plumtree, LLC, for variances to reduce the required 30-foot use setback to 9 feet for a service drive and to 19.2 feet for a trash receptacle and enclosure in a B-2 (Business: General) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

Thomas Meachum, Esquire, represented the property owner. Robert Vogel and William King testified in support of the petition. Michelle Thompson and Linda Burlew testified in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find as follows:

1. The subject property, known as 3410 Plumtree Drive, is located in the 2nd Election District on the east side of Plumtree Drive about 100 feet south of US 40 (the "Property"). The Property is identified on Tax Map 24, Grid 4, as Parcel 1115, Lot 8.

2. The 2.36-acre, irregularly shaped Property has about 200 feet of frontage on Plumtree Drive and is about 644 feet deep. While the Property varies in width, most of the lot is about 166 feet deep wide.

3. The Property is currently improved with two structures. The first is a 160' deep by 55' wide one- and two-story building in office, retail, and restaurant use located about 50 feet from Plumtree Drive and 30 feet from the southerly lot line. There are parking spaces to this building's front and west side, the latter being legally noncomplying to the 10-foot parking from the right-of-way setback. To the north and northwest is a former office building currently in restaurant use. The area east of the multiuse building is the graded level area of a proposed building expansion and a partially completed parking lot expansion.

4. There are three points of access to the Property, one in front of the restaurant, a second slightly to the south, and a third in the Property's southwestern corner. This last entrance is the proposed service drive for which the Petitioner seeks this variance.

5. Vicinal Properties. The properties to the north, west, and east are various B-2 zoned lots improved with commercial buildings, many with frontage along Route 40. All of these properties are smaller in area than the subject Property, and are the same or greater in either width or depth than the width of the subject Property. Several buildings on these lots are larger than those on the Property. To the Property's south is the R-A-15 zoned site of the Plumtree Apartments complex.

6. Zoning History. In BA case No. 05-037V (Petitioner's Exhibit 1), the Board of Appeals approved a variance to reduce the required 30-foot setback to 9 feet for a service drive. This variance has lapsed.

7. The Petitioner is seeking relief from Section 119.D.1.a of the Zoning Regulations to reduce the required 30-foot setback to 9 feet for a service drive and to 19.2 feet for an enclosed dumpster. The variances would permit the use of the service drive for waste management, deliveries, and emergency vehicles.

8. Robert Vogel, the project engineer, testified to the Property's unique shape and size, concurred with the staff report, which recommends approval. He stated the service drive variance was needed to service the dumpster, for deliveries, and to comply with Fire Department access.

9. In response to my comment that I observed a personal vehicle parked in the service area, the property owner William King stated that he would inform employees not to park there.

10. Michelle Thompson, the manager of the adjacent Country Apartments, and Linda Burlew, Regional Manager, testified to losing tenants because of construction noise and to being concerned that service and dumpster trucks would generate more noise. The managers introduced into evidence several photographs of the common property line. These photographs indicate that the only buffer is a wire fence and several old trees. In response to their questions about the proposed landscaping (as shown on the Conditional Use Plan), Mr. Vogel explained that Type "D" landscaping was required to buffer the two uses. William King agreed to work with the managers on any problems related to the use, including dumpster times (which he agreed would not begin until 8:00 a.m.) and pointed out that the landscaping shown on the Conditional Use Plan would help to mediate noise problems.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides that a variance may be granted only if all of the following determinations are made:

- (1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.
- (2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.
- (3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.
- (4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I find the requested variances comply with Section 130.B.2.a(1) through (4) and therefore may be granted.

1. The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651

A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

In this case, the Property is unusually narrow for a B-2 zoned parcel. Together with the 30-foot wide setback from a residential district required by Section 119.D.2.b, the resultant building envelope appears to be the narrowest in the area (including combined lots). The existing buildings on the site and the proposed building expansion are of typical size for the uses. The lot's narrowness and the resultant building envelope provide insufficient space to locate a reasonably permitted structure, parking, and service drive. Consequently, the service drive may not be practically located on the Property without a variance. I therefore conclude the Property's narrowness and size are unique physical conditions causing the Petitioner practical difficulties in complying with the setback requirements, in accordance with Section 130.B.2.a(1).

2. The proposed service drive will be used for customary and permitted, moderately intense, business purposes. The driveway encroachments and will be screened by a type "D" landscape buffer consisting of Leland cypress trees and dumpster trucks may service the site only between the hours of 8:00 a.m. and 12:00 p.m., which will mitigate any adverse impacts caused by the encroachments. I therefore conclude the granting of the variances will not alter the essential character of the neighborhood or district in which the Property is located, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare, in accordance with Section 130.B.2.a(2).

3. The practical difficulties in complying strictly with the setback regulations arise from the Property's narrowness and location, and were not created by the Petitioner, in accordance with Section 130.B.2.a(3).

4. The proposed service drive and dumpster cannot feasibly be located elsewhere on the Property. Within the intent and purpose of the regulations, then, the variances are the minimum necessary to afford relief, in accordance with Section 130.B.2.a(4).

ORDER

Based upon the foregoing, it is this 15th day of December 2008, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Plumtree, LLC for variances to reduce the 50-foot use setback to 9 feet for a service drive and to 19.2 feet for an enclosed dumpster structure are hereby **GRANTED**;

Provided, however, that:

1. The variances will apply only to the service drive and dumpster being requested and not to any new structures, uses, or change in uses on the subject property or to any additions thereto.
2. Dumpster trucks shall access the service drive only between the hours of 8:00 a.m. and 12:00 p.m.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**


Michele L. LeFaivre

Date Mailed:

12/17/08

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.